

Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA), Room 502 Annex Building, P.O. Box 96456, Washington, D.C. 20090-6456. Comments will be available for public inspection at this location during regular business hours.

FOR FURTHER INFORMATION CONTACT: John P. Duncan III, Director, Tobacco Division, AMS, USDA, Room 502 Annex Building, P.O. Box 96456, Washington, D.C. 20090-6456. Telephone (202) 205-0567.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Department proposes to revise the Official Standard Grades for Flue-Cured Tobacco, U.S. Types 11-14 and Foreign Type 92 pursuant to the authority contained in the Tobacco Inspection Act of 1935, as amended (49 Stat. 731; 7 U.S.C. 511 *et seq.*).

The proposed revision will add a special factor (subgrade) to describe mixing of adjacent stalk positions. Stalk positions or groups as defined in the current standards are a division of a type covering closely related grades based on certain characteristics such as shape, body, or the general quality of tobacco. The traditional practice of sorting tobacco in the flue-cured marketing area has changed dramatically during the past decade. Producers are combining adjacent stalk positions which makes grading more difficult and has made U.S. tobacco less desirable for certain customers in the world market. This new special factor would identify any lot of tobacco which contains 25 percent of an adjacent stalk position.

The Flue-Cured Tobacco Cooperative Stabilization Corporation, composed of all flue-cured producers, recommended the adoption of a new mixed grade definition in a letter to the Department dated April 18, 1995. Also, an Advisory Committee, appointed by Congress to study the government tobacco program in 1995, included a similar recommendation in their final report dated April 27, 1995. The committee was composed of 31 members representing tobacco producers, dealers and manufacturers.

This rule has been determined not significant for the purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an

irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Additionally, in conformance with the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), full consideration has been given to the potential economic impact upon small business. All tobacco warehouses and producers fall within the confines of "small business" which are defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. The Administrator of the Agricultural Marketing Service, has determined that this action would not have a significant economic impact on a substantial number of small entities. This proposed rule would not substantially affect the normal movement of the commodity in the marketplace. Compliance with this proposed rule would not impose substantial direct economic cost, recordkeeping, or personnel workload changes of small entities, and would not alter the market share or competitive positions of small entities relative to the large entities and would in no way affect normal competition in the marketplace.

All persons who desire to submit written data, views, or arguments for consideration in connection with this proposal may file them with the Director, Tobacco Division, AMS, USDA, Room 502 Annex Building, P.O. Box 96456, Washington, D.C., 20090-6456, not later than (30 days after publication).

List of Subjects in 7 CFR Part 29

Administrative practice and procedure, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping requirements, Tobacco.

For the reasons set forth in the preamble, it is proposed that the regulations at 7 CFR Part 29 be amended as follows:

PART 29—TOBACCO INSPECTION

Subpart C—Standards

1. The authority citation for Part 29, subpart C is revised to read as follows:

Authority: 7 U.S.C. 511b, 511m, and 511r.

2. Section 29.1059 is revised to read as follows:

§ 29.1059 Special factor.

A symbol or term authorized to be used with specified grades. Tobacco to which a special factor is applied may meet the general specifications but which has a peculiar side or characteristic which tends to modify the grade. (See Rules 10, 21, 22, 26, 28, and 29.)

3. A new § 29.1135 is added to read as follows:

§ 29.1135 Rule 29.

Any lot of tobacco containing 25 percent or more of an adjacent group, which otherwise meets the specifications of a grade shall be treated as a special factor grade by placing the special factor "M" preceding the grademark.

4. In § 29.1181, the first sentence in the paragraph immediately following table "13 Grades of Nondescript", is revised to read as follows:

§ 29.1181 Summary of standard grades.

* * * * *

Special factors "U" (unsound), "W" (doubtful-keeping order), "S" (strip), and "M" (mixed) may be applied to all grades. * * *

Dated: May 19, 1995.

Lon Hatamiya,
Administrator.

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Animal and Plant Health Inspection Service

9 CFR Part 130

[Docket No. 92-174-1]

RIN 0579-AA67

Import/Export User Fees

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend existing user fees for certain import- and export-related services we provide for live animals and birds, animal products, organisms and vectors, and germ plasm and veterinary diagnostic services. We are also proposing to establish user fees for certain import- and export-related services we provide for live animals and birds, and animal products and byproducts. We are also proposing to make several miscellaneous changes, such as amending the definitions of certain words. These actions are necessary to help ensure that we recover our costs and to simplify and clarify the application of user fees for the public.

These actions are taken in accordance with the Food, Agriculture, Conservation, and Trade Act of 1990, as amended, which gives us the authority to set and collect these user fees.

DATES: Consideration will be given only to comments received on or before July 25, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket 92-174-1, Animal and Plant Health Inspection Service, Policy and Program Development, Regulatory Analysis & Development, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 92-174-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: For information concerning services provided for live animals and birds, and germ plasm, contact Dr. Robert Kahrs, Director, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737-1231; (301) 734-3294.

For information concerning services provided for animal products and byproducts, organisms and vectors, contact Dr. Kathleen Akin, Senior Staff Veterinarian, Import/Export Products, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737-1231; (301) 734-7830.

For information concerning services provided for veterinary diagnostics, contact Dr. Joan M. Arnoldi, Director, National Veterinary Services Laboratories, P.O. Box 844, Ames, IA 50010; (515) 239-8266.

For information concerning fees, contact Ms. Barbara Thompson, Chief, Financial Systems and Services Branch, Budget and Accounting Division, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737-1232; (301) 734-5901.

SUPPLEMENTARY INFORMATION:

Background

The Food, Agriculture, Conservation and Trade Act of 1990, as amended (referred to below as the Farm Bill), authorizes the Secretary of Agriculture, among other things, to prescribe and collect fees to reimburse the Secretary for the cost of carrying out the provisions of the Federal animal quarantine laws that relate to the importation, entry, and exportation of

animals, articles, or means of conveyance (section 2509(c)(1) of the Farm Bill). The Secretary of Agriculture is also authorized, under section 2509(c)(2) of the Farm Bill, to prescribe and collect fees to recover the costs of carrying out certain veterinary diagnostics services.

The user fee regulations in 9 CFR part 130 (referred to below as the regulations) prescribe user fees that the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) collects for various services that we provide. The regulations currently include fees for: (1) Endorsing export certificates for animals; (2) providing quarantine services within the United States for imported animals; (3) providing certain inspection and supervision services within the United States for animals intended for export; (4) conducting certain veterinary inspections outside the United States; and (5) conducting certain veterinary diagnostics services.

Our user fees are calculated to cover the full cost of providing the service for which the fee is charged. The cost of providing a service includes direct labor and direct material costs. It also includes administrative support, agency overhead, and Departmental charges.

Direct labor costs are the costs of employee time spent specifically to provide the service. For example, at APHIS's Animal Import Centers, animal caretakers and veterinarians prepare for the arrival of animals or birds to be quarantined in the Center, care for them (feed, water, clean cages or stalls) while they are quarantined, observe them while they are quarantined, release them from quarantine, and clean the quarantine area afterwards. These are all direct labor costs. For other services, the direct labor costs would be different. For example, if the service is testing a tissue sample for disease-causing organisms, then direct labor costs include the time spent by laboratory personnel to prepare the sample, conduct the test, and read the test. Or, if the service is inspecting an animal, the direct labor costs include the time spent by the inspector to conduct the inspection. Direct labor costs vary with the type of service provided.

Direct material costs include the cost of any materials needed to supply the service. For example, among other things, animals in quarantine need feed, water and bedding, disinfectants, and pharmaceuticals (for preparation of any needed tranquilizers). These are all direct material costs. Again, direct material costs are different for different services. For example, direct material costs for conducting a laboratory test

would include animals, eggs, glassware, chemicals, and other supplies necessary to perform the test.

Administrative support costs include local clerical and administrative activities; indirect labor hours (supervision of personnel and time spent doing work that is not directly connected with the service but which is nonetheless necessary, such as repairing equipment); travel and transportation for personnel; supplies, equipment, and other necessary items; training; general supplies for offices, washrooms, cleaning, etc.; contractual services (such as guard service, maintenance, trash pickup, etc.); grounds maintenance; chemicals and glassware; and utilities (such as water, trash pickup, telephone, electricity, natural and propane gas, heating and diesel oil). Some administrative support items may be contractual or not, depending on local circumstances. For example, trash pickup may be provided as a utility or a contractual service. However, the costs are all administrative support. As with direct labor and direct material costs, the type, amount and cost of administrative support vary with the type of service provided.

Agency overhead is the pro-rata share, attributable to a particular service, of the management and support cost for all agency activities. Included are the cost of providing budget and accounting services, management support, including the Administrator's office and support at the regional level, personnel services, public information service, and liaison with Congress.

The final cost item included in the calculation, Departmental charges, is APHIS's share, expressed as a percentage of the total cost, of services provided centrally by the Department of Agriculture (Department). Services the Department provides centrally include the Federal Telephone Service; mail; National Finance Center processing of payroll, billing, collections, and other money management; unemployment compensation; Office of Workers Compensation Programs; and central supply for storing and issuing commonly used supplies and Department forms. The Department notifies APHIS how much the agency owes for these services. We have included a pro-rata share of these Departmental charges, as attributable to a particular service, in our fee calculations. An outline of the basic process is shown below. The actual components, quantities, and costs used to calculate the fee are different for each service.

The basic steps in the calculation, for each particular service, are:

1. Determine the following costs:
direct labor;
direct material;
pro-rata share of administrative support;
pro-rata share of agency overhead; and
pro-rata share of Departmental charges;

2. Add all costs;

3. Estimate, based on past experience, the frequency of service, that is, the number of times the service will be performed in one year; and

4. Divide the total of all costs by the frequency of service.

The result of these calculations is the total cost to provide a particular service one time.

When we first adopted user fees, we determined that our user fees for import- and export-related services should be rounded up to the nearest quarter. The amended user fees proposed in this document are also rounded up to the nearest quarter. This is necessary in order to ensure that we collect enough revenue to cover the costs of providing these services. If we were to round down, many fees would be lower than the cost of the service. As we would not have a reserve fund, there would be no funds for us to draw on to make up the deficiency.

As we stated at the time we published our current user fees (see Docket 92-042-2, 58 FR 67647-67656, at p. 67649), we intend to review our user fees at least annually to ensure that they accurately reflect the cost of the services provided, and to publish any necessary adjustments in the **Federal Register**.

We have therefore reviewed our records of user fees collected during fiscal years (FYs) 1992 through 1994. Our current user fees are based on FY 1990 costs. In the four years since then, there has been an overall increase in all costs of providing services, due to inflation and general economic conditions. Additionally, we underestimated personnel costs when we set our current fees. For example, in addition to anticipated federal pay increases (4.2 percent in FY 1992 and 3.7 percent in FY 1993), in FY 1994 there were locality pay and cost of living increases of 3.09 to 8 percent for employees stationed in different parts of the United States. We also underestimated support costs, such as clerical support, office rent, telephone, etc., in setting our current user fees. It is also now apparent that we overestimated our anticipated revenues when setting our current fees. For example, unexpected drops in both the number of animals exported from the United States and the number of export certificates requested has resulted in a correspondingly unexpected drop in

user fees collected for export-related services.

As a result of general cost increases, and our errors in estimating costs and revenues, we did not collect enough money in user fees during FYs 1992 through 1994 to cover the costs of providing the services for which we charged fees. In fact, for each of those fiscal years, we incurred a deficit of over \$1 million. As our user fees are intended to recover full cost, it is apparent that our user fees are too low and must be raised to reflect changes in direct labor costs, direct material costs, administrative support costs, Agency overhead, and other expenses.

In addition, based upon our review, we believe certain existing user fees should be restructured. For example, some general fees need to be broken down into more specific fees. Also, some new fees need to be established to cover services which we provide, but for which we are not now charging a user fee. The specific proposed user fee changes are discussed below under "Revised Fees."

In addition, we are proposing to amend certain provisions of the regulations to clarify their intended meaning. The specific changes are discussed below under "Miscellaneous."

Revised Fees

Hourly and Minimum User Fees
(§§ 130.3, 130.5, 130.6, 130.7, 130.9, 130.10, and 130.21)

Our user fees are calculated to recover our costs to provide routine services. Our personnel often conduct inspections and provide supervision for animals and birds within the United States that are different from or in addition to our flat fee services, which are discussed under "Flat Rate User Fees" below. In those instances, we charge an hourly rate user fee to recover these costs. However, these hourly rates do not ensure that our basic costs are always covered. We developed the minimum fee primarily to cover the costs of handling unusually small importations at ports of entry. Therefore, we charge an hourly rate user fee, with a minimum fee, for services in the following areas: APHIS Animal Import Centers; privately operated temporary import quarantine facilities; import or entry of live animals; miscellaneous import or entry services; endorsement of export health certificates; inspection and supervision provided within the United States for animals, birds, and animal products and byproducts intended for export; and veterinary diagnostics.

We are proposing to revise our hourly and minimum fees, which are listed in §§ 130.3, 130.5, 130.6, 130.7, 130.9, and 130.21, to reflect projected FY 1995 costs. These user fees need to be amended due to increased direct labor costs, direct material costs, agency overhead, administrative support, agency overhead, and Departmental charges.

For the reasons stated above, we are proposing to amend §§ 130.3, 130.5, 130.9, and 130.21 to increase the hourly and quarter-hour user fees from \$50.00 to \$56.00 and from \$12.50 to \$14.00, respectively. Additionally, we are proposing to amend §§ 130.5, 130.6, 130.7, 130.9, and 130.21 to increase the minimum user fee for any service provided on an hourly basis from \$16.00 to \$16.50.

Further, in many of these sections, we are proposing to make changes to clarify the application of the user fee. These proposed changes are discussed below.

User Fees for Exclusive Use of Space at APHIS Animal Import Centers (§ 130.3)

Section 130.3 includes a provision allowing importers, at their option, to request space at certain APHIS Animal Import Centers for the exclusive use of the animals for which the request was made. The user fee for this service is a single, monthly rate. Section 130.3(a)(1) designates the South Wing and North Wing at the Miami, FL, Animal Import Center and 5,904 sq. ft. (548.5 sq.m.) at the Newburgh, NY, Animal Import Center as available for exclusive use. The exclusive use space at Newburgh, NY, is designated in terms of square footage only because there are several buildings that meet those specifications. As a result, the buildings may be used interchangeably, depending upon the number and type of animals for which the space is being requested. However, any building that is utilized for this service will be occupied only by the specific animals for which the service was requested. The overall operating costs for these designated spaces have increased, mainly due to increases in locality pay, direct labor, and supplies. Therefore, we are proposing to revise the monthly user fee charged for this service.

Additionally, we are proposing to make an additional space available for exclusive use at the Newburgh, NY, Animal Import Center. This additional space, which would be designated as Space B, would provide 9,742 sq.ft. (905 sq.m.) for exclusive use. The proposed user fee for this service would be \$78,555.00 per month. If this proposed amendment is adopted, we will designate the existing exclusive use

space currently being charged on a monthly basis at the Newburgh, NY, Animal Import Center as Space A to avoid confusion. As stated above, proposed newly-designated Spaces A and B would represent available square footage, not specific buildings.

User Fees for Services Conducted Outside an APHIS Employee's Normal Tour of Duty (§§ 130.5, 130.9, & 130.21)

We often receive requests for services outside of employees' normal tours of duty. Employees' normal tours of duty are those hours, during the business hours of the facility where the employees work, when employees are scheduled for duty. Employee's normal tours of duty do not include Federal holidays or holidays that are observed locally. For example, our facilities and employees in foreign countries observe local holidays. When we provide services outside employee's normal tours of duty, we charge reimbursable overtime in accordance with existing regulations, in addition to the APHIS user fee for each service. This action, which became effective on January 21, 1994 (58 FR 67647-67656, Docket No. 92-042-2), was necessary to fully recover our costs of providing user fee services on overtime.

When this action became effective, several importers and exporters raised concerns about paying the user fee plus reimbursable overtime when the user fee is charged at the hourly rate. In these cases, both the user fee and the reimbursable overtime fee are structured on a direct labor hourly basis, and consequently, some users perceived that they were being billed twice for the services.

We have re-examined this requirement and propose to revise it regarding charging reimbursable overtime in connection with the hourly user fees.

Consequently, we propose to amend §§ 130.5, 130.9, and 130.21 to charge a premium user fee rate of \$65.00 per hour on weekdays and holidays and \$74.00 per hour on Sundays for each employee required to conduct a service outside of the regular tour of duty. These rates were determined by calculating the average grade and step of APHIS field personnel and applying the Federal salary for an individual at that grade level. The rates for weekdays, holidays, and Sundays are different because the rate of basic pay for employees is different for these days¹:

holiday pay is one-and-one-half times the hourly pay for regularly scheduled weekday duty; Sunday pay is twice the hourly pay for regularly scheduled weekday duty. If a holiday falls on a Sunday, the highest applicable rate of pay applies, that is, Sunday pay.

If this proposal is adopted, we will charge only the premium user fee for hourly user fee services performed outside an APHIS employee's normal tour of duty.

We charge hourly user fees for providing miscellaneous veterinary services related to the import, entry or export of live animals, animal products, organisms and vectors, and germ plasm. We charge hourly user fees in these cases as it would be difficult to establish a flat fee. This is because costs vary widely from one customer to another; consequently, a flat fee would be very inequitable to some importers and exporters. Because the hourly user fees are structured to more directly charge importers and exporters for the exact time required to provide the service, we believe we should establish hourly fees for work performed on overtime, rather than specify that two hourly rates be charged.

Other user fees that are charged on a flat rate basis, for example, per animal inspected or certificate issued, represent an average of the costs for providing the service during normal working hours. For example, the fee for issuing an export health certificate is calculated by determining the average time it takes to research the requirements of the destination country, advise an exporter, verify test results or certification statements or both, endorse a certificate, and complete the necessary paperwork. In these cases, we will continue to charge the flat rate user fee plus reimbursable overtime, or we would not recover our costs. In the example given above, an office may spend several hours during the normal working day to research the requirements of the destination country and advise the exporter. If the exporter comes in after normal working hours and only reimbursable overtime is charged for verifying the tests and endorsing the certificate, APHIS will not recover costs for related services performed during the day, or the time spent the next day to file the paperwork.

User Fees for Inspection and Supervision Services Provided Within the United States for Export Animals, Birds, and Animal Products and Byproducts (§ 130.21)

Section 130.21 covers user fees for APHIS services provided in the United States for the export of animals, birds, and animal products and byproducts. For the convenience of the public, this section lists examples of the types of services we perform. Therefore, we are proposing to amend § 130.21 to add the following service to the list of inspection and supervision services we provide within the United States for the export of animals, birds, and animal products and byproducts: Approving or inspecting an embryo or semen collection center or the animals in it. We currently charge a user fee for these services. We are proposing to add this service to the inspection and supervision services list to eliminate some recent confusion regarding our ability to charge for these particular services.

Because it is impracticable to list all the services that we provide, we are also proposing to add a statement that § 130.21 covers export or embarkation services not specified elsewhere in the regulations. This proposed change would make this section equivalent to § 130.9, which governs user fees for APHIS services provided for importation or entry of animals, birds, and animal products and byproducts.

Further, we are proposing to add a statement to make it clear that the user fees established in § 130.21 will be charged for each employee assigned to perform the service. We believe these proposed amendments will provide users further clarification of our user fees.

Flat Rate User Fees

We charge a flat rate user fee for services that do not vary widely in the amount of time needed to complete them. These user fees are based on time (daily, monthly, etc.); commodity (animal, animal product, germ plasm, etc.); service (endorsement, inspection, supervision); measurement (certificate, load, lot, etc.); or purpose (breeder, feeder, slaughter, etc.). The flat rate user fees also reflect the average cost of providing particular services on a nationwide basis. As with the hourly user fees, the flat rate fees must recover our costs for direct labor, direct material, agency overhead, administrative support, agency overhead, and Departmental charges. As with the hourly user fees (see discussion above), these costs have increased.

¹ See 5 U.S.C. 5542 and 5 CFR 550.113, and Salary Tables published by the United States Office of Personnel Management, Personnel Systems and Oversight Group, Office of Compensation Policy,

Theodore Roosevelt Building, 1900 E Street NW, Washington, DC 20415-0001.

Therefore, we are proposing to revise the flat rate user fees contained in §§ 130.2, 130.3, 130.6, 130.7, 130.8, 130.10, and 130.20. We are also proposing to amend the flat rate user fee, contained in § 130.16, for virus isolation testing for certain diseases, due to the volume of testing done. This proposed change will clarify how we charge for those tests and will lower their costs. We are proposing other changes to some of these sections, which are discussed below.

User Fees for the Importation or Entry of Live Animals (§§ 130.6 and 130.7)

Section 130.6(a) provides for user fees for various services related to import or entry of live animals along the United States-Mexico border. These services include inspecting and supervising the following animals for import or entry into the United States: feeder animals; slaughter animals; horses other than slaughter; in-bond and in-transit animals; and any other ruminants. Sometimes, these animals are denied entry into the United States or importers withdraw their requests for importation after we have provided services. Despite these circumstances, APHIS employees must provide the same services that are provided to animals that enter the United States. In order to recover our costs for these services, we are proposing to amend § 130.6(a) to add a statement to make it clear that the user fees in this section apply to live animals presented for importation into the United States, whether or not the animals enter the United States.

Section 130.7 also includes inspecting and processing cattle, swine, sheep and goats that are imported in-bond or in-transit movement through the United States. Often, after our employees have performed these services, these animals are denied entry into the United States or the importer withdraws the request for entry. For the reason stated above, we are proposing to amend § 130.7(a) to add a statement to make it clear that the user fees in this section apply to live animals presented for importation into the United States, whether or not the animals are allowed entry into the United States.

Section 130.7 provides user fees for various services related to import or entry of live animals at ports other than along the United States-Mexico border. These services include inspecting and processing all types of animals that are imported and moved directly to slaughter, and poultry (including eggs) that are imported for any reason. We currently charge a user fee per load for services we provide to these animals. Consistent with industry usage of the

term, we defined "load" to mean all the animals or birds carried on one vehicle. In practice, however, we have found that we do not recover our full costs when we charge for services per load because some importers or brokers share the use of a vehicle. When this happens, we perform at least two times the amount of services for one fee. Therefore, we are proposing to charge this user fee for slaughter animals and poultry that are presented for importation into the United States and that originate from the same importer address, are destined for the same address, and require one entry permit or authorization. This would allow us to charge importers or brokers individually for the services provided to them. This change would require revision of the definition for "load" in § 130.1 (see discussion below under "Miscellaneous").

The processing or supervision of in-bond or in-transit animals in accordance with § 130.7 of the regulations often occurs at locations other than an official port of entry, that is, the one listed on the import permit or accompanying document. For example, air traffic flight patterns or fueling needs may require an aircraft destined for Guam to land in Alaska. Although the official port of entry would be Guam, in this situation we would provide the necessary services in Alaska, and we would charge a user fee for the services provided in Alaska. To clarify this, we are proposing to amend § 130.7(a) to add a statement to note one in the table stating that the user fees in this section apply to services provided for the importation of in-bond or in-transit animals wherever the service is provided.

User Fee for Germ Plasm Containers (§ 130.8)

Among other things, § 130.8 contains user fees for each permit we issue for germ plasm being imported into the United States and each certificate we endorse for germ plasm being exported from the United States. These services include checking the accuracy of information submitted, completing various forms, maintaining files, and issuing or endorsing documents.

For germ plasm being imported into the United States, we charge this fee per permit; however, germ plasm is not imported under individual permit. Therefore, we are proposing to charge the user fee per load (see discussion below under "Miscellaneous").

For germ plasm being exported from the United States, we inspect and reseal the containers to confirm that the contents match what we have endorsed on the certificate. To recover our costs

relating to this service, we are proposing to add a footnote to the table in § 130.8 to clarify that the user fee for germ plasm being exported from the United States includes a single inspection and resealing of the container in which the germ plasm is being exported. Any subsequent inspections and resealing of the container would be charged at the applicable hourly rate.

If germ plasm containers that had been exported are returned empty and presented for importation into the United States, we inspect the containers to ensure that they are adequately cleaned and disinfected. To recover our costs for this service, we are proposing to charge the applicable hourly rate. This would be clarified by a footnote, which would be added to the table in this section.

Section 130.8 also provides for a user fee for approving establishments, warehouses, and facilities under 9 CFR parts 94 through 96, to receive or treat various animal products and byproducts imported into the United States. As explained in the discussion under "Flat Rate User Fees" above, we are proposing to revise these fees to cover our increased direct labor costs to complete all paperwork, agreements, and inspections. Additionally, we are proposing to revise our regulations to clarify that these fees cover all program-required inspections during the year. For example, the yearly user fee for program inspections of a facility during a 3-year approval period would be \$262.75 for the first year, \$152.00 for the second year, and \$152.00 for the third year, for a total of \$566.75 for a 3-year period. However, if APHIS personnel determine that it is necessary to conduct additional special inspections, other than routine program inspections, they will charge the applicable hourly user fee.

User Fees for Pet Birds (Proposed new § 130.10)

We are proposing to add specific user fees for pet birds quarantined in an APHIS owned or supervised quarantine facility. Our current user fees for pet birds, contained in § 130.8, apply only to pet birds which are not required to be quarantined in an APHIS owned or supervised quarantine facility.

Regulations governing the importation of pet birds are contained in 9 CFR part 92. Pet birds are defined in § 130.1 as "birds which are imported for the personal pleasure of their individual owners and are not intended for resale." Pet birds which must be quarantined in an APHIS owned or supervised quarantine facility, in accordance with 9 CFR part 92, are normally quarantined

for 30 days. The proposed fee would be assessed per isolette, per day. That is, all the birds quarantined in one isolette would be covered by one fee, which would be assessed daily for the duration of the quarantine.

This proposed user fee would recover all costs involved with feed, housing, care, and handling of the birds. The proposed user fee would not recover the costs of testing the birds for which separate user fees apply. However, the proposed user fee would account for marginal decreases in our costs per bird when more than one bird is kept in an isolette. Based on the information provided by the person requesting the service, APHIS personnel at the APHIS owned or supervised quarantine facility would determine the appropriate number of birds that should be housed per isolette. For example, an isolette might house 5 small parakeets but only 1 large cockatoo, depending on the sizes of the individual birds. Birds belonging to different owners would not be housed in the same isolette. If individual owners of pet birds request that their birds be housed individually or in a smaller group of birds per isolette than that isolette could hold, the user fee would apply per isolette based upon the actual number of birds quarantined in each isolette. As another example, an individual pet bird owner may only have one pet bird to quarantine. Regardless of the size of the bird, the fee for one bird in an isolette would apply.

Section 130.2 provides user fees for individual animals and birds quarantined in APHIS Animal Import Centers. As discussed above, we are proposing to establish specific user fees for pet birds. To eliminate any possible confusion, we are proposing to change the heading and the table in paragraph (a) of § 130.2 to indicate that the user fees in this section do not apply to pet birds imported into the United States under 9 CFR part 92.

User Fees for Multiple and Subsequent Antigen Tests (§ 130.14)

Section 130.14 provides user fees for tests performed at the National Veterinary Services Laboratories (NVSL) in connection with the importation or exportation of animals or birds. These tests include Agar gel immunodiffusion, buffered acidified plate antigen presumptive, card, competitive enzyme linked immunosorbent assay, and complement fixation, among others. When necessary to expedite results, some of these tests may be performed at authorized sites other than NVSL. For example, card tests may be performed by APHIS personnel on cattle at certain U.S. border ports. In order to recover

our costs related to conducting these tests, we are proposing to amend § 130.14 to make it clear that the user fees in this section apply to tests conducted at NVSL or at any authorized site, except the Foreign Animal Disease Diagnostic Laboratory (FADDL). The user fees for laboratory tests performed at FADDL are provided separately, because FADDL works with agents of diseases exotic to the United States, which require more expensive biosecurity measures.

In addition, § 130.14 provides tiered user fees for three tests—complement fixation (CF), hemagglutination inhibition (HI), and virus neutralization (VN). That is, there is one fee for the first CF, HI, and VN test on a sample, and a second, lower user fee for each additional test of the same type on the same sample. Paragraph (a) of § 130.14 contains an explanation and example of this tiered user fee. Some users have interpreted the example to mean the user fee is reduced for each additional test, regardless of type. We are proposing to amend this section to make it clearer that any reduction in cost for multiple antigen tests is for tests of the same type on the same sample.

User Fees for Virus Isolation Testing (§ 130.16)

Section 130.16 provides user fees for laboratory tests we perform as part of reference assistance testing. Reference assistance testing is defined in § 130.1 of the regulations as “tests conducted by APHIS at the request of a veterinarian, state animal health official, or university, to either establish or confirm a diagnosis.” Section 130.16(a)(3) includes a user fee for virus isolation testing. This test is administered when various viral diseases, including avian diseases, are suspected. Because virus isolation tests for Newcastle disease are often administered in conjunction with bird quarantines, they are performed more often and in larger numbers than virus isolation tests for other avian or mammalian diseases. This larger volume results in lower costs per test for Newcastle disease. Therefore, we are proposing to charge a separate user fee for virus isolation tests for Newcastle disease. The proposed user fee would be \$14.00 per test for this disease only. The user fee will remain at \$29.75 for all other virus isolation tests, including tests for all other avian viral diseases. This would save users \$15.75 per test for Newcastle disease.

Section 130.16 also provides tiered user fees for two tests—complement fixation (CF) and virus neutralization (VN). That is, there is one fee for the first CF and VN test on a sample, and

a second lower user fee for each additional test of the same type on the same sample. As discussed above under “User Fees for Multiple and Subsequent Antigen Tests (§ 130.14),” some users found our explanation and example of reduced cost for multiple antigen tests to be confusing. For that reason, we are proposing to revise the note to make it clearer that any reduction in cost for multiple antigen tests is for tests of the same type on the same sample.

User Fees for the Johnin Diagnostic Reagent (§ 130.17)

Section 130.17 provides user fees for diagnostic reagents, slide sets, and tissue sets provided by APHIS. Section 130.17(a) lists the user fee for Johnin OT, a diagnostic reagent, as \$12.25 per 10-ml unit. The 10-ml unit for Johnin OT is incorrect. The standard unit is 2 ml. Therefore, we are proposing to amend § 130.17(a) to correct the listing for Johnin OT to read \$12.25 per 2-ml unit. Although this correction, if adopted, will increase user costs for this diagnostic reagent from \$2.25 per ml to \$6.13 per ml, it will make the Johnin OT user fee equivalent to the other similar diagnostic reagents and will allow us to recover the full cost for providing the Johnin OT.

User Fees for Special Shipping and Handling of Reagents (§§ 130.14, 130.15, 130.16, 130.17, and 130.18)

We charge user fees for certain veterinary diagnostic services, including providing certain diagnostic reagents, slide sets, and tissue sets. Veterinary diagnostics is the work performed in a laboratory to determine if a disease-causing organism or toxin is present in body tissues or cells. We also consider sterilization by gamma radiation to be a veterinary diagnostic service. Often, providing these veterinary diagnostic services requires special mail handling, such as express, overnight, or foreign mailing. The cost of this special mail handling is not included in the costs of providing diagnostic reagents, slide sets, and tissue sets. Therefore, we are proposing to charge the costs for special mail handling to the person who requests the service.

User Fees for Endorsing Export Health Certificates (§ 130.20)

Section 130.20 provides user fees for each export health certificate requested for the exportation of animals or birds. These user fees are intended to cover the many steps associated with endorsing the certificates. The steps include reviewing the health certificates; confirming that the importing country's requirements have

been met; verifying laboratory test results for each animal if tests are required; reviewing any certification statements required by the importing country; and endorsing, or signing, the certificates. These user fees also cover our costs for administrative support (area office rent, utilities, supplies, etc), agency overhead, and Departmental charges.

Section 130.20(c) states that “* * * user fees prescribed in this section will not apply to an export health certificate if it is endorsed by an APHIS veterinarian in the course of performing inspection or supervision services for the animals listed on the certificate.* * *” As explained in a final rule published in the **Federal Register** on January 9, 1992 (57 FR 755-773, Docket No. 91-135), this means that when an APHIS veterinarian endorses an export health certificate in the course of conducting supervision or inspection services concerning the export animals listed on the certificate, only the hourly user fee applies. Since the publication of that rule, we have found that in some cases all the steps necessary to endorse the export health certificate, except signing the certificate, are performed at separate times from the hourly inspection services. Thus, we do not recover all our costs related to preparing the certificate for signature by charging the hourly user fee. Therefore, we are proposing to amend § 130.20 to exempt from the flat rate user fee only those export health certificates that are prepared for endorsement completely on site of the inspection as an integral part of the inspection service. In these cases, the appropriate hourly user fee (hourly, premium, reimbursable overtime) would apply.

Sometimes, our veterinarians are unable to endorse the export health certificates because importers withdraw their requests for export health certificates after services have been performed. Despite these circumstances, APHIS employees must provide the same services that are provided for animals that are exported from the United States. In order to recover our costs related to services for exporters requesting export health certificates that are not endorsed, we are proposing to charge the minimum user fee of \$16.50, which was developed primarily to cover the costs of handling unusually small importations at ports of entry. The minimum user fee would apply for each export health certificate that meets this description.

The export health certificates discussed above are requested for various categories of animals and birds, including slaughter animals of all types

moving to Canada or Mexico; non-slaughter horses moving to Canada; poultry; hatching eggs; animal products; and other animals and birds. Under the last category, we have included any other endorsements or certifications that may be needed for other animals and birds not already listed. However, we are often asked to endorse or certify articles that may not fall under the definitions of animals or birds. For example, we are frequently asked to issue export certificates for edible fish eggs. As our user fee regulations do not include a category for these articles, we are not recovering our costs for providing this service. Therefore, we are also proposing to amend § 130.20(a) to replace the “animals and birds” category with a category for “other endorsements or certifications.”

Section 130.20(c) contains a CFR reference that was not corrected in a previous document when this section was redesignated. Therefore, we are proposing to amend § 130.20(c) to reference § 130.21 instead of § 130.7. This correction would align export services. It would not affect any costs.

Miscellaneous

We are also proposing to make several miscellaneous changes to clarify how certain user fees are to be applied. We believe these changes would make it easier for users to determine their costs.

Payment of User Fees (§ 130.50)

Section 130.50 provides procedures for the payment of user fees. Among other things, it provides that user fees may be paid, under certain circumstances, by cash, check, money order, or credit card. This section allows payment by all types of checks, including traveler's checks, but it does not specify to whom the checks must be made payable. Therefore, we are proposing to amend § 130.50 to allow payment of user fees by check, including traveler's check, drawn on a U.S. bank and made payable to the “U.S. Department of Agriculture” or “USDA.” Additionally, we are proposing to allow payment by credit card (VISA [Insert trademark symbol] or MasterCard [Insert trademark symbol]) at any APHIS Animal Import Center or APHIS office that is equipped to handle credit cards. We would add a footnote advising the public that they may obtain a list of such offices or centers from the Animal and Plant Health Inspection Service, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20737-1231.

Definitions (§ 130.1)

Section 130.1 defines various terms used in the regulations. Currently, the regulations include a definition of “load.” As discussed under the “Flat Rate User Fees: User Fees for the Importation or Entry of Live Animals (§§ 130.6 and 130.7)” above, we are proposing to revise the basis by which we determine the user fee for certain live animals presented for importation into the United States. As discussed under “User Fee for Germ Plasm Containers (§ 130.8)” above, we are also proposing to revise the basis by which we determine the user fee for germ plasm presented for importation into or exportation from the United States. To accommodate these changes, we are proposing to amend the definition of “load” to read “Those animals, poultry, or germ plasm, presented for importation into the United States in a single shipment, that originate from the same importer address, are destined for the same address, and require one entry permit or authorization.”

The regulations define “pet bird” to mean birds which are imported for the personal pleasure of their individual owners and are not intended for resale. We are proposing to amend this definition to make it consistent with the definition of pet birds found in 9 CFR part 92. The proposed definition for pet birds would read “Birds, except ratites, which are imported for the personal pleasure of their individual owners and are not intended for resale.”

Additionally, the regulations do not define “test” or “United States.” These omissions have led to misunderstandings. Defining these terms would help eliminate confusion. Therefore, we propose to amend § 130.1 by defining these terms as follows: (1) “Test” means a single analysis performed on a single specimen from an animal, animal product, commercial product, or animal feed; and (2) “United States” means the several States of the United States, the District of Columbia, Guam, the Commonwealth of Northern Mariana Islands, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, and all other territories and possessions of the United States.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. This rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the OMB. This proposed rule updates certain fees related to import/export inspection and certification, animal

quarantine, and veterinary diagnostics. Some of the current fees must be changed to ensure full recovery of APHIS' costs. The proposed amendments would also provide further clarification of the Agency's user fee collection process.

The proposed rule would, if adopted, increase user fee collections by about \$2.5 million each year. This would result in an annual taxpayer savings of about \$2.5 million, since these APHIS expenses would not be funded by general tax revenues.

Fee revisions included in this proposed rule could impact some importers/exporters of live animals, importers/exporters of animal byproducts, and firms that seek APHIS' veterinary diagnostic services. The revised fees are expected to have a relatively minor impact on "small" entities since the amount of increase represents only a small fraction (less than 1 percent) of the typical cost of purchasing and permanently importing a breeding grade registered animal into the United States. That cost is between \$1,500 and \$5,000. Purchase and import costs for feeder and slaughter animals are usually significantly lower per animal, but can easily exceed \$1,500 per animal. The price increases included in this proposed rule range from \$0.25 to \$31.75 per animal. The average cost increase is about \$4.89 per animal. That is less than 1 percent of purchase and import costs.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is

adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control numbers are 0579-0015, 0579-0055, and 0579-0094.

List of Subjects in 9 CFR Part 130

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry, Quarantine, Reporting and recordkeeping requirements, Tests.

Accordingly, 9 CFR part 130 would be amended as follows:

PART 130—USER FEES

1. The authority citation for part 130 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102-105, 111, 114, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 130.1, (the definition for "Germplasm" would be removed and added in its place; the definitions of *load* and *pet bird* would be revised; and definitions for "Germ plasm" "test" and "United States" would be added, in alphabetical order, to read as follows:

§ 130.1 Definitions.

* * * * *

Germ plasm. Semen, embryos, or ova.
* * * * *

Load. Those animals, poultry, or animal germ plasm, presented for importation into the United States in a single shipment, that originate from the same importer address, are destined for the same address, and require one entry permit or authorization.
* * * * *

Pet birds. Birds, except ratites, which are imported for the personal pleasure of their individual owners and are not intended for resale.
* * * * *

Test. A single analysis performed on a single specimen from an animal, animal product, commercial product, or animal feed.

United States. The several States of the United States, the District of Columbia, Guam, the Commonwealth of Northern Mariana Islands, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, and all other territories and possessions of the United States.
* * * * *

3. Section 130.2 would be amended as follows:

a. In the section heading, before the word "birds", by adding the word "certain".

b. In paragraph (a), by revising the table to read as set forth below.

§ 130.2 User fees for individual animals and certain birds quarantined in APHIS Animal Import Centers.

(a) * * *

Animal or bird	Daily user fee
Birds (including zoo birds, but excluding ratites and pet birds imported in accordance with Part 92 of this subchapter):	
0-250 grams	\$1.00
251-1,000 grams	3.25
Over 1,000 grams, and any bird in nonstandard housing or receiving nonstandard care and handling	7.50
Ratites:	
Chicks (less than 3 months of age)	5.75
Juveniles (3 months through 10 months of age)	8.00
Adults (11 months of age and older)	16.25
Poultry (including zoo poultry):	
A. Doves, pigeons, quail	2.00
B. Chickens, ducks, grouse, guinea fowl, partridge, pea fowl, pheasants	3.50
C. Game cocks, geese, swans, turkeys, any poultry housed in nonstandard housing or receiving nonstandard care and handling	8.25
Equines (including zoo equines, but excluding miniature horses):	
1st through 3rd day	149.50
4th through 7th day	108.25
8th and later days	91.75
Miniature horses	40.25
Zoo animals (except equines, birds, and poultry)	32.25
Domestic animals:	
Camels, cattle, bison, buffalo	56.50
All others	15.00

* * * * *

4. Section 130.3 would be amended as follows:

a. In paragraph (a)(1), by revising the table to read as set forth below.

b. By revising paragraph (a)(3) to read as set forth below.

§ 130.3 User fees for exclusive use of space at APHIS Animal Import Centers.

(a)(1) * * *

Animal import center	Space available	Monthly user fee
Miami, Fl:		
South Wing.	6,952 sq. ft. (645.9 sq.m.).	\$30,285.00
North Wing.	6,545 sq. ft. (608.1 sq.m.).	\$29,377.00
Newburgh, NY:		
Space A	5,904 sq. ft. (548.5 sq.m.).	\$47,609.00
Space B	9,742 sq. ft. (905 sq.m.).	\$78,555.00

* * * * *

(c) * * *

(3) If the importer chooses to pay for additional services on an hourly basis, the user fees for each employee required to perform the service are:

(i) \$56.00 per hour;

(ii) \$14.00 per quarter-hour;

(iii) With a minimum of \$16.50.

* * * * *

5. Section 130.4 would be amended as follows:

a. By designating the introductory paragraph as paragraph (a).

b. By adding a new paragraph (b) to read as set forth below.

§ 130.4 User fees for services at privately operated permanent import-quarantine facilities.

* * * * *

(b) If a service must be conducted on a Sunday or holiday or at any other time outside the normal tour of duty of the employee, then reimbursable overtime, as provided for in 9 CFR part 97, must be paid for each service, in addition to the user fee listed in this section.

6. Section 130.5 would be amended as follows:

a. In paragraph (b)(1), by removing "\$50.00" and adding "\$56.00" in its place.

b. In paragraph (b)(2), by removing "\$12.50" and adding "\$14.00" in its place.

c. In paragraph (b)(3), by removing "\$16.00" and adding "\$16.50" in its place.

d. By adding a new paragraph (c) to read as set forth below.

§ 130.5 User fees for services at privately operated temporary import-quarantine facilities.

* * * * *

(c) If a service must be conducted on a Sunday or holiday or at any other time outside the normal tour of duty of the employee, then the premium user fee rate, in lieu of the user fee listed in paragraph (b) of this section, must be paid for each employee required to perform each service:

(1) \$65.00 per hour for weekdays and holidays; and

(2) \$74.00 per hour for Sundays.

7. Section 130.6 would be amended as follows:

a. In paragraph (a), by removing the figure "\$16.00" and adding "\$16.50" in its place.

b. In paragraph (a), by removing the phrase "live animals imported into or entering the United States" and adding "live animals presented for importation into or entry into the United States" in its place.

c. In paragraph (a), by revising the table to read as set forth below.

§ 130.6 User fees for import or entry services for live animals at land border ports along the United States-Mexico border.

(a) * * *

Type of live animal	User fee (per head)
Feeder	\$1.75
Slaughter	2.50
Horses, other than slaughter	29.25
In-bond or in transit	3.75
Any ruminants not covered above ...	6.00

* * * * *

8. Section 130.7 would be amended as follows:

a. In paragraph (a), by removing the figure "\$16.00" and adding "\$16.50" in its place.

b. In paragraph (a), by removing the phrase "live animals imported into or entering the United States" and adding "live animals presented for importation into or entry into the United States" in its place.

c. In paragraph (a), by revising the table to read as set forth below:

§ 130.7 User fees for import or entry services for live animals at all other ports of entry.

(a) * * *

Type of live animal	User fee
Animals being imported into the United States:	
Horses, other than slaughter and in transit horses.	\$19.00 per head
Breeding animals, except horses—Grade animals:	
Swine	0.50 per head
Sheep and goats	0.50 per head
All others	2.25 per head
Registered animals, all types	4.00 per head
Feeder animals:	
Cattle (not including calves)	1.00 per head
Swine	0.50 per head
Sheep and calves	0.25 per head
Slaughter animals, all types	16.50 per load
Poultry (including eggs), imported for any purpose	33.00 per load
Animals transiting ¹ the United States:	
Cattle	1.00 per head
Swine	0.25 per head
Sheep and goats	0.025 per head
Horses and all other animals	4.50 per head

¹ The user fee in this section will be charged for services provided to in-bond animals or animals transiting the United States, at the actual port of entry. For example, if the official port of entry is Guam, but the animals are actually provided import or entry services in Alaska, the user fee will be charged for services provided in Alaska. The hourly user fee will be charged for services provided at the port where the animals leave the United States.

* * * * *

9. In § 130.8, paragraph (a), by revising the table and adding a footnote at the end of the table to read as follows:

§ 130.8 User fees for other services.

(a) * * *

Service	User fee
Inspection for approval of slaughter establishment:	
Initial approval	\$246.50 for all inspections required during year.
Renewal	213.50 for all inspections required during year.
Pet birds, except pet birds of U.S. origin entering the United States from Canada:	
Which have been out of United States more than 60 days	169.75 per lot.

Service	User fee
Which have been out of United States 60 days or less	71.25 per lot.
Germ Plasm—Being imported: ¹	
Semen	39.50 per load.
Embryo	39.50 per load.
Being exported: ²	
Semen	33.50 per certificate.
Embryo (up to 5 donor pairs)	54.75 per certificate.
Embryo (each additional group of donor pairs, up to 5 pairs per group)	24.75 per group of donor pairs.
Processing VS form 16-3, "Application for Permit to Import Controlled Material/Import or Transport Organisms or Vectors":	
For permit to import fetal bovine serum when facility inspection is required	208.50 per application.
For all other permits	27.50 per application.
Amended application	11.50 per amended application.
Application renewal	15.00 per application.
Fetal Bovine Serum sample verification	666.00 per verification.
Import compliance assistance	24.00 per release.
Release from export agricultural hold	24.00 per release.
Inspection of approved establishments, warehouses, and facilities under 9 CFR parts 94 through 96:	
Approval (Compliance Agreement)	262.75 for first year of 3-year approval (for all inspections required during the year).
Renewed approval	152.00 per year for second and third years of 3-year approval (for all inspections required during the year).

¹ For inspection of empty containers being imported into the United States, the applicable hourly user fee would apply.

² This user fee includes a single inspection and resealing of the container. Each subsequent inspection and resealing requires the payment of an additional user fee.

* * * * *

10. Section 130.9 would be amended as follows:

a. In paragraph (a) introductory text, by removing the figure "\$50.00" and adding "\$56.00" in its place, and by removing the figure "\$12.50" and adding "\$14.00" in its place.

b. In paragraph (a) introductory text, by removing the figure "\$16.00" and adding "\$16.50, for each employee required to perform the service" in its place.

c. By revising paragraph (b) to read as set forth below.

§ 130.9 User fees for miscellaneous import or entry services.

* * * * *

(b) If a service must be conducted on a Sunday or holiday or at any other time outside the normal tour of duty of the employee, then the premium user fee rate, in lieu of the user fee listed in paragraph (a) of this section, must be paid for each employee required to perform each service:

(1) \$65.00 per hour for weekdays and holidays; and

(2) \$74.00 per hour for Sundays.

11. Section 130.10 would be added to read as follows:

§ 130.10 User fees for pet birds quarantined at APHIS-owned or supervised quarantine facilities.

(a) The person for whom the service is provided and the person requesting the service are jointly and severally liable for the following user fees, which include standard care, feed, and

handling, and which must be paid for each animal or bird quarantined in an Animal Import Center.⁷

Number of birds in isolette	Daily Fee
1	\$6.50
2	7.75
3	9.25
4	10.75
5	12.00

(b) Based on the information provided to APHIS personnel, APHIS personnel at the Animal Import Center or other APHIS owned or supervised quarantine facility will determine the appropriate number of birds that should be housed per isolette.

(c) If the person or persons for whom the service is provided or the person or persons requesting the service request additional services on an hourly basis, the user fees for each employee required to perform the service are:

(1) \$56.00 per hour; and

(2) \$14.00 per quarter-hour;

(3) With a minimum of \$16.50.

12. Section 130.14 would be amended as follows:

a. By revising the section heading to read as set forth below.

b. In paragraph (a), after the term "NVSL", by adding the phrase "or at authorized import sites (excluding FADDL)".

⁷ See footnote 5 to § 130.2(a).

c. In paragraph (a), by revising footnote 1 to the table to read as set forth below.

d. By adding a new paragraph (c) to read as set forth below.

§ 130.14 User fees for tests performed by the NVSL or at authorized import sites (excluding FADDL).

(a) * * *

¹ Because tests with multiple and subsequent antigens can be set up for a fraction of the cost of a single-antigen test, tests subsequent to the first antigen used for these assays are reduced down to 20% of the cost of using the first antigen. The following are examples of these cost savings: complement fixation (CF) tests for equine encephalomyelitis or vesicular stomatitis; hemagglutination inhibition (HI) for equine encephalomyelitis or equine influenza; virus neutralization (VN) tests for porcine respiratory and reproductive syndrome. For example, for CF tests for eastern equine encephalomyelitis (EEE), western equine encephalomyelitis (WEE), and Venezuelan equine encephalomyelitis (VEE) and for VN tests for the New Jersey and Indiana serovars of vesicular stomatitis (VS), the costs are as follows: EEE—\$9.00, WEE and VEE—\$2.00 each; VS New Jersey—\$7.50, VS Indiana—\$1.50. The total of these five assays is \$22.00 for each specimen submitted.

* * * * *

(c) The user fees in this section do not include any costs that may be incurred due to special mail handling, such as express, overnight, or foreign mailing. If a test requires special mail handling, all costs incurred must be paid by the user as specified in paragraph (a) of this section, in addition to the user fee listed in paragraph (a) of this section.

13. Section 130.15 would be amended as follows:

a. In paragraph (a), by revising footnote 1 to the table to read as set forth below.

b. By adding a new paragraph (c) to read as set forth below.

§ 130.15 User fees for tests performed at FADDL.

(a) * * *

¹ Because tests with multiple and subsequent antigens can be set up for a fraction of the cost of a single-antigen test, tests subsequent to the first antigen used for these assays are reduced down to 20% of the cost of using the first antigen. The following assays are examples of these cost savings: complement fixation (CF) tests for foot-and-mouth disease or vesicular stomatitis; virus neutralization (VN) tests for foot-and-mouth disease or vesicular stomatitis. For example, for CF and VN tests for foot-and-mouth disease A, O, and C antigens, the costs are as follows: CF A antigen—\$30.50, O antigen—\$6.25, and C antigen—\$6.25; VN A antigen—\$22.00, O antigen—\$4.50, and C antigen—\$4.50. The total of these six assays is \$74.00 for each specimen tested for these agents.

* * * * *

(c) The user fees in this section do not include any costs that may be incurred due to special mail handling, such as express, overnight, or foreign mailing. If a test requires special mail handling, all costs incurred must be paid by the user as specified in paragraph (a) of this section in addition to the user fee listed in paragraph (a) of this section.

14. Section 130.16 would be amended as follows:

a. In paragraph (a), in the table, by revising the entry for "Virus isolation" and by adding a new test in alphabetical order to read as set forth below.

b. By adding a new paragraph (c) to read as set forth below.

§ 130.16 User fees for reference assistance testing.

(a) * * *

Test	User fee
* * * * *	
(3) Other tests:	
* * * * *	
Virus isolation (except Newcastle disease virus)	\$29.75
Virus isolation for Newcastle disease virus	14.00

* * * * *

(c) The user fees in this section do not include any costs that may be incurred due to special mail handling, such as express, overnight, or foreign mailing. If a test requires special mail handling, all costs incurred must be paid by the user as specified in paragraph (a) of this

section in addition to the user fee listed in paragraph (a) of this section.

15. Section 130.17 would be amended as follows:

a. In paragraph (a), in the table, in the entry for Johnin: OT, under the Unit (ml.) column, by removing the numeral "10" and adding "2" in its place.

b. By adding a new paragraph (c) to read as set forth below.

§ 130.17 User fees for diagnostic reagents, slide sets, and tissue sets.

* * * * *

(c) The user fees in this section do not include any costs that may be incurred due to special mail handling, such as express, overnight, or foreign mailing. If a test requires special mail handling, all costs incurred must be paid by the user as specified in paragraph (a) of this section in addition to the user fee listed in paragraph (a) of this section.

16. Section 130.18 would be amended as follows:

a. By redesignating the existing text as paragraph (a).

b. By adding a new paragraph (b) to read as set forth below.

§ 130.18 User fees for sterilization by gamma radiation.

(a) * * *

(b) The user fees in this section do not include any costs that may be incurred due to special mail handling, such as express, overnight, or foreign mailing. If a test requires special mail handling, all costs incurred must be paid by the user as specified in paragraph (a) of this section in addition to the user fee listed in paragraph (a) of this section.

17. Section 130.20 would be amended as follows:

a. In paragraph (a), by redesignating footnote 7 as footnote 8, and by revising the table to read as set forth below.

b. In paragraph (b)(1), by revising the table to read as set forth below.

c. In paragraph (c), by removing the words "it is endorsed" and by adding the phrase "the export health certificate is prepared for endorsement completely at the site of the inspection" in their place.

d. In paragraph (c), by removing the reference "§ 130.7" and adding "§ 130.21" in its place.

e. By redesignating paragraph (d) as paragraph (e) and adding a new paragraph (d) to read as set forth below.

§ 130.20 User fees for endorsing export health certificates.

(a) * * *

Certificate categories	User fee
Slaughter animals, of any type, moving to	\$24.50

Certificate categories	User fee
Canada or Mexico
Nonslaughter horses to Canada	26.25
Poultry	21.00
Hatching eggs	21.00
Animal products	21.50
Other endorsements or certifications	16.50

(b)(1) * * *

Number of tests/vaccinations required	Number of animals on certificate	Fee
1-2	First animal	\$52.50
	Each additional animal.	3.00
3-6	First animal	64.75
	Each additional animal.	5.00
7 or more	First animal	75.75
	Each additional animal.	6.00

* * * * *

(d) The user fees prescribed in this section will not apply if a requested export health certificate is not endorsed by an APHIS veterinarian. The minimum user fee of \$16.50 will be charged for each export health certificate that is requested but not endorsed.

18. Section 130.21 would be amended as follows:

a. By revising paragraphs (a)(1) through (a)(5) to read as set forth below.

b. By adding new paragraphs (a)(6) and (a)(7) to read as set forth below.

c. In paragraph (b), before the colon, by adding the phrase "charged per each employee required to perform the service".

d. In paragraph (b)(1), by removing the figure \$50.00 and adding "\$56.00" in its place.

e. In paragraph (b)(2), by removing the figure "\$12.50" and adding "\$14.00" in its place.

f. In paragraph (b)(3), by removing the figure "\$16.00" and adding "\$16.50" in its place.

g. By revising paragraph (c) to read as set forth below.

§ 130.21 User fees for inspection and supervision services provided within the United States for export animals, birds, and animal products and byproducts.

(a) * * *

(1) Inspecting an export isolation facility and animals in it;

(2) Supervising animal or bird rest periods prior to export;

(3) Supervising loading or unloading of animals or birds for export shipment;

(4) Inspecting means of conveyance used to export animals or birds;

(5) Conducting inspections under authority of part 156 of this chapter;

(6) Approving or inspecting an embryo or semen collection center or the animals in it; and

(7) Other export or embarkation services not specified elsewhere in this part.

* * * * *

(c) If a service must be conducted on a Sunday or holiday or at any other time outside the normal tour of duty of the employee, then the premium user fee rate, in lieu of the user fee listed in paragraph (b) of this section, must be paid for each employee required to perform each service:

(1) \$65.00 per hour for weekdays and holidays; and

(2) \$74.00 per hour for Sundays.

19. Section 130.50 would be amended as follows:

a. In paragraph (b)(1), by redesignating footnote 8 as footnote 9 and revising it to read as set forth below.

b. In paragraph (b)(2), at the end of the sentence, by adding "drawn on a U.S. bank in U.S. dollars and made payable to the U.S. Department of Agriculture or USDA".

c. In paragraph (b)(3), immediately before the word "or", by adding "drawn on a U.S. bank in U.S. dollars and made payable to the U.S. Department of Agriculture or USDA".

d. By revising paragraph (b)(4) to read as set forth below. § 130.50 Payment of user fees.

* * * * *

(b) * * *

(4) Credit cards (VISA [*Insert trademark symbol*] or MasterCard [*Insert trademark symbol*]) if payment is made at an Animal Import Center or an APHIS office that is equipped to process credit cards.⁹

* * * * *

Done in Washington, DC, this 22nd day of May 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Regulations; Non-Manufacturer Rule

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) proposes to amend its size regulations to require that small business non-manufacturers provide the product of a small business manufacturer on small business set-aside contracts or section 8(a) contracts, regardless of the dollar value of the contract. Under certain conditions, a waiver of this requirement may be granted by the SBA.

DATES: Comments must be submitted on or before July 25, 1995.

ADDRESSES: Send comments to: Gene VanArsdale, Acting Assistant Administrator for Procurement Policy and Liaison, U.S. Small Business Administration, 409 Third Street, SW, Mail Code 6252, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT:

Gary M. Jackson, Assistant Administrator for Size Standards, (202) 205-6618.

SUPPLEMENTARY INFORMATION: In order to qualify as small for purposes of a small business set aside or section 8(a) procurement of manufactured or processed products, the Small Business Act (15 U.S.C. 637(a)(17)) and SBA's implementing size regulations (13 CFR 121.906 and 121.1106) require non-manufacturers to provide the product of a domestic small business manufacturer.

An offeror which is not the manufacturer (1) must itself be a small business concern, and (2) must also supply a product manufactured by a domestic small business concern. This requirement is commonly referred to as SBA's "non-manufacturer rule." Compliance with the non-manufacturer rule has been a long-standing regulatory requirement for the small business set-aside and 8(a) programs, and a part of the Small Business Act since 1988. Pursuant to the Act, the non-manufacturer rule may be waived by the SBA if SBA determines that no small business manufacturer can reasonably be expected to offer a project meeting the specifications required by the solicitation, or if SBA determines that no small business manufacturer is available to participate in the Federal market. Under the SBA's existing size regulations, the non-manufacturer rule has not been extended to supply contracts processed under "Small Purchase Procedures."

Recent legislation, however, has rescinded the Small Purchase Procedures. Thus, the exemption to the non-manufacturer rule for procurements processed under those procedures no longer exists. This action was part of the Federal Acquisition Streamlining Act of 1994 (FASA) that was signed into law on October 13, 1994. Among its many

changes, FASA requires that simplified acquisition procedures be developed for contracts between \$2,500 and \$100,000, and that all contracts between \$2,500 and \$100,000 be reserved exclusively for small concerns unless the contracting officer is unable to obtain offers from at least two small business concerns that are competitive in price and quality.

The SBA is proposing to apply the nonmanufacturer rule to supply contracts that are reserved for small business (i.e., set aside for small business or reserved for the 8(a) program) regardless of the dollar value of the contract. This policy, adopted, would consistently apply the non-manufacturer rule to small business set-aside and 8(a) contracts for supplies issued under all procurement methods, including those processed under the new Simplified Acquisition Procedures. The SBA believes that this rule would further the overall purpose of the FASA, which is to simplify Federal procurement procedures. Applying different rules according to dollar value of contracts would further complicate the procurement process. The impact of this proposed rule would effectively be limited to those procurements ranging in value between \$2,500 and \$25,000 that were previously exempt from the non-manufacturer rule as procurements processed under Small Purchases Procedures. (Note: Procurements of \$2,500 and below will be processed under new micro-purchase procedures and will not be reserved for small business competition. Thus, the proposed rule would not apply.)

The SBA does not believe an exception to the non-manufacturer rule based on the dollar value of contract is needed. Public Law 100-656 amended the Small Business Act by statutorily requiring the non-manufacturer rule. As indicated above, the legislation also included a provision granting SBA the authority to waive the nonmanufacturer rule when (1) there is *no* small business manufacturer for that particular class of products in the federal market (class waiver); or when (2) there is *no* small business manufacturer which can meet the specifications of a particular contract (individual waiver). The waiver provision addresses those situations where the application of the nonmanufacturer rule is inappropriate due to the absence of small business manufacturers in the Federal market. By way of illustration, examples of waivers to the non-manufacturer rule are described by the two following cases.

1. *Example of class waiver.* There are no small business manufacturers of four-wheel drive utility trucks.

⁹ A list of Animal Import Centers and APHIS offices that accept credit cards may be obtained from the Animal and Plant Health Inspection Service, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20737-1231.